

YOR920010159US2

AFTER FINAL: EXPEDITED ACTION

00280670PA

Amendment dated 04/20/2009

Reply to office action mailed 02/20/2009

REMARKS

Claims 1 and 3-30 are currently pending in the application. By this amendment, claims 1, 14, 19, 22, 27 and 30 are amended for the Examiner's consideration. The foregoing separate sheets marked as "Listing of Claims" show all the claims in the application, with an indication of the current status of each.

The Examiner maintains rejection of claims 14 and 27 under §112, second paragraph, on the grounds that the claim language raises a question whether a plurality of bid lines can be associated with a bid. The Examiner's suggestion is appreciated, since this is not the applicant's intention. Consequently, the issue of clarity in the claim language with respect to the user interface illustrated in the figures has been revisited in this amendment, and claims 1 and 19, as well as 14 and 27, have been amended to clarify the intended meaning.

The prior amendment attempted to resolve this issue by an amendment based upon the following logic. The subject claims are exemplified in Fig. 13, where two bid lines are displayed and, correspondingly, a count of the number of bid lines ("Count: 2") is displayed at item 550. Similarly, in Fig. 14, three bid lines are displayed and a count of the number of bid lines ("Count: 3") is also displayed at item 550. For added clarity, claim 14 was amended to read "a count of the number of bid lines associated with the at least one bid, there being one bid line for each bid ...", with corresponding clarifications in claims 15 and 27.

The Examiner argues that a) the claim language does not stand on its own and b) "as one bid line is assigned to each bid, then the count of the number of bid lines associated with the at least one bid would be one." It should be noted that there are multiple references in the claims to "bids", "bid lines" and the connection between them. While the Examiner's interpretation of the phrase "a count of bid lines associated with the at least one bid" plausibly suggests the possibility of multiple bid lines per bid if this phrase is viewed in isolation, the applicant's position is that the

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applicant's intended interpretation is not only plausible but called for in the context of the entire claim. However, the above amendments are believed to enhance the clarity of applicant's intended meaning and are therefore agreeable.

Before leaving this topic, applicant wishes to stress the importance of relying upon the specification for the interpretation of claim language. It is observed that the Examiner's approach of considering claim language in isolation is fraught with difficulty for inventors who are charged with responsibility for explaining their invention to "one skilled in the art." It would be impractical and unrealistic to expect inventors to consider each word or phrase in their disclosure in isolation, in expectation that "one skilled in the art" would fail to understand the used terminology in context. The tacit assumption that "one skilled in the art" would attend to the trees to the exclusion of the forest would deprive the standard of "one skilled in the art" of any meaning.

For example, the Examiner notes that "displaying a count of bid lines, in its broadest sense, is not necessarily equivalent to displaying a numerical indicator of the total number of bids displayed on the graphical visual interface." While the above amendment agreeably resolves this concern of the Examiner, the applicant believes that sensible claim interpretation – based on the point of view of "one skilled in the art" within the context of the application as a whole – does not require departure from the way the word "count" is used in the specification. In practical effect, the Examiner is insisting upon use of a dictionary definition of the word "count." While the applicant is agreeable to complying with the Examiner's preferences in this instance, the importance of a) the language of the specification b) as viewed by one skilled in the art should be emphasized.

In some sense, the simplest resolution of these points made by the Examiner is to replace the term "count" with the Examiner's suggested language "numerical indicator". Indeed, "numerical indicator" is used in the above amendment for that reason. However, the terminology used in the specification is an important

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consideration in claim construction. It is respectfully submitted that the Examiner has not accorded sufficient weight to the meanings of terms as those meanings are evident from the specification. In particular, the term “count” in reference to bid lines is used in the specification as follows:

At page 22 in connection with Figure 13:

“Figure 13 is a visual interface which provides a count of the number of bid lines displayed in the visual interface. In Figure 13, the count is represented by reference numeral 550, and is displayed as “2” (representing bid lines 1 and 3). The visual interface of the present invention includes a process which may continuously count the number of bid lines currently shown in the visual interface. By showing the count 550, the visual interface is capable of assisting the buyer in determining the current status of the buyer's decision-making process. Also, the count may be used in conjunction with the business rules or purchasing policies of the buyer organization to limit the number of sell bids to a predetermined amount in accordance with a specified business rule or policy” (emphasis supplied). The business rule or policy may be stored in the database 324 and retrieved by the present invention in order to generate the display of Figure 13.

At page 22 in connection with Figure 14:

Figure 14 is a visual interface which shows a mechanism for enlarging or reducing (scaling) the size of sell bid lines in the visual interface. Figure 14 also shows the count 550. Often in an RFQ environment, the number of bids and the number of attributes are large, e.g., a couple of hundred bids having twenty or more attributes. When accommodating a large number of bids having a large number of attributes, the sell bids displayed in the visual interface may become large or complex. The present invention is thus capable of scaling the visual interface to a desired and/or viewable size. That is, the present invention is capable of reducing a large view to fit a computer screen, or enlarging a portion of the display for a buyer to examine specific details of the enlarged portion. The ability to interactively scale the view will allow the buyer to detect patterns in the visualized data set which may have been previously unrecognized. The scaling of the visual interface may be accomplished via a sliding bar, scroll-bar or other such mechanism. The entire visual display may also be scrolled up, down, left or right as shown by arrows 570 and 580.

The foregoing six instances of the use of “count” represent all the uses of this term in the specification. All of these uses conform to the narrow construction of “count” as

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a numerical representation as shown “by reference numeral 550.” The interpretation of “count” as an abstract deduction from a purely visual representation (i.e. the observer can see the bid lines in the display and count them) is not consistent with the specification, as quoted above. It will be observed that the visual interface

a) “includes a process which may continuously count the number of bid lines currently shown in the visual interface” and b) shows “the count 550” thereby “assisting the buyer in determining the current status of the buyer’s decision-making.” Thus, an interpretation of “count” that relies upon the buyer/observer to see the bid lines on the display and count them is not disclosed by the specification. A further indication of this numerical representation, tracked by the visual interface, is provided by a) use of the “count” “to limit the number of sell bids to a predetermined amount in accordance with a specified business rule or policy” and b) storage of such a business rule or policy “in the database 324” for retrieval by the invention “in order to generate the display of Figure 13.” Clearly, the “number of sell bids” limited to “a predetermined amount in accordance with a specified business rule or policy” which may be “stored in the database 324” precludes an interpretation of “count” that would rely upon the buyer/observer to “count” the number of bid lines. It is the provision of “count 550” whereby the visual interface itself displays the numerical representation to assist the buyer/observer.

Thus the Examiner’s interpretation of “count” is not consistent with the specification.

It must be conceded, of course, that a dictionary definition of “count” and the use of “count” in conventional parlance would support the Examiner’s interpretation. The issue, then, is whether or not it is appropriate to interpret “count” in accordance with the broad scope of its ordinary meaning, notwithstanding the narrower construction provided in the specification.

Happily, the Court of Appeals for the Federal Circuit has provided guidance on precisely this question. Formerly, absent a specific re-definition of a term in the

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specification, “a court will give a claim term the full range of its ordinary meaning,” *Texas Digital Systems, Inc. V. Telegenix, Inc.*, 308 F.3d 1193 (Fed. Cir. 2002) at 1202. What the Examiner has done here is in accordance with the *Texas Digital* line of cases.

However, in the more recent case of *Phillips v. AWH Corporation*, 415 F.3d 1303 (Fed. Cir. 2005) the court specifically considered and rejected the *Texas Digital* lines of cases, stating that the *Texas Digital* approach “improperly restricts the role of the specification in claim construction” (*Phillips*, at page 1320, emphasis added). In support of this conclusion the court cited their own precedent that “the specification may define claim terms by implication such that the meaning may be found in or ascertained by a reading of the patent documents” (*Irdeto Access v. Echostar*, 383 F.3d 1295, 1300 (Fed. Cir. 2004)) and “[A] claim term may be clearly redefined without an explicit statement of redefinition” (*Bell Atlantic Network Services v. Covad*, 262 F.3d 1258, 1268 (Fed. Cir. 2001).

Further elaborating on their conclusion to reject the *Texas Digital* line of cases, the court also said that

“The main problem with elevating the dictionary to such prominence is that it focuses the inquiry on the abstract meaning of words rather than on the meaning of claim terms within the context of the patent. Properly viewed, the ‘ordinary meaning’ of a claim term is its meaning to the ordinary artisan after reading the entire patent. Yet heavy reliance on the dictionary divorced from the intrinsic evidence risks transforming the meaning of the claim term to the artisan into the meaning of the term in the abstract, out of its particular context, which is the specification. The patent system is based on the proposition that claims cover only the invented subject matter. As the Supreme Court has stated, ‘it seems to us that nothing can be more just and fair, both to the patentee and the public, than that the former should understand, and correctly describe, just what he has invented, and for what he claims a patent.’ *Merrill v. Yeomans*, 94 U.S. at 573-74. The use of a dictionary definition can conflict with that directive because the patent applicant did not create the dictionary to describe the invention. Thus, there may be a disconnect between the patentee's responsibility to describe and claim his invention, and the dictionary editors' objective

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of aggregating all possible definitions for particular words.” (*Phillips*, at page 1321)

Consequently, in the present case, the law under *Phillips* requires that the term “count” be given the meaning provided in the specification. This meaning is circumscribed by the above recited paragraphs from the specification, which include the entirety of uses – all six – of the term “count” in the specification, all of them in connection with Figures 13 and 14 and reference numeral 550.

It is therefore submitted that maintenance of the ground of rejection under 35 U.S.C. §112, second paragraph, was improvident and should be withdrawn. However, as indicated above, the applicant is agreeable to the foregoing amendment to use the term “numerical indicator” in the claims. It is respectfully requested that the Examiner provided some consideration on this point in determining whether the finality of the rejection should be maintained, since these accommodations are the only amendments herein.

The Examiner has also maintained rejection of claims 1 and 3-30 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,765,138 to Aycock et al. (“Aycock”) in view of U.S. Patent No. 5,831,631 to Light et al. (“Light”), U.S. Patent No. 6,993,504 to Friesen, and an article *How to Lie with Charts* by Jones published in the February 2000 issue of *iUniverse*.

The invention provides a single display of bids responsive to a multi-attribute RFQ in such a fashion that the position of each bid on each attribute is clearly presented for comparison. As shown in the figures, this is accomplished by using vertical lines for each attribute and identifying each bid by a “bid line” that connects its position on each vertical line. The claim language includes a detailed description of the geometry of this display. In the figures, the attribute lines are vertical, but the claim language would also cover horizontal attribute lines.

With respect to claim 19, the Examiner cites Aycock. In the prior response the applicant pointed out that in Aycock the “values” were provided by an evaluation team. To one skilled in the art, of course, it makes no sense – certainly no “common

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sense” – to confuse the assessments of a bid evaluation team with attribute values supplied by the bidder. The applicant is concerned that this is yet another example of a claim interpretation approach being taken by the Examiner that departs from the basic principles of a) the language of the specification b) as viewed by one skilled in the art. In support of his approach the Examiner cites a 1969 case, *In re Prater and Wei*, 162 USPQ 541, 550 (CCPA). It is respectfully suggested that the above recited *Phillips* case takes precedence over the case cited by the Examiner.

Furthermore, the teaching of *In re Gordon*, 221 USPQ 1125 (CAFC 1984) applies here. In *Gordon*, the Board opinion had affirmed the examiner’s conclusion that the applicant’s blood filter assembly was obvious in view of prior art to French that disclosed a liquid strainer that relied upon gravity and had inlet and outlet valves at the top. The Board reasoned that it would have been obvious to turn the French device upside down. The CAFC reversed, stating that the “mere fact that the prior art could be so modified would not have made the modification obvious unless the prior art suggested the desirability of the modification.” The court further noted that “if the French apparatus were turned upside down, it would be rendered inoperable for its intended purpose” (emphasis supplied). *Gordon*, at p. 1127.

In Aycock, the values are provided by an evaluation team as part of a system for selecting among competing bidders. The Aycock system would be rendered inoperable for its intended purpose if the bidders themselves provided their own evaluation values. Similarly, the present invention discloses attribute values as proposed by the bidders. The system of the present invention would be rendered inoperable for its intended purpose by grafting onto it values determined by the party on the other side of this economic transaction. The Examiner has failed to make to necessary logical connection that would have suggested to one skilled in the art the desirability of modifying Aycock to reproduce an aspect of the claimed invention. It is difficult to avoid the conclusion that the Examiner has cherry picked teachings which in isolation illustrate aspects of the invention but which in context of the

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invention as a whole fail to motivate one skilled in the art to modify existing art to reproduce the invention.

As a further indication of the problematic character of the Examiner's reliance upon claim language in isolation, consider the Examiner's argument that "whether the information was inputted by a vendor rather than an evaluation team pertains to intended use." To one skilled in the art, this is not a credible interpretation. A bid is a bid. It is the bidder who prepares the bid. It is clear in both the specification and the claims that the attribute values – the "information" – are part of the bid and therefore, necessarily, must be supplied by the bidder. Consequently, contrary to the Examiner's assertion, the claims are not "silent concerning which party is providing information to the system." The claims and specification are quite clear.

In an ironic twist, the Examiner then argues that the applicant's further arguments concerning the Jones and Light references is a "piecemeal analysis". The applicant's arguments are not piecemeal, but rather are based upon the viewpoint of "one skilled in the art", who can be expected to look at the references as a whole, seeking to make use of the teachings of relevant references. **However, "one skilled in the art" would not cobble together isolated concepts.** The applicant's concern, repeated above, is that the Examiner is doing exactly that: cobbling together isolated concepts taken from references without reference to the point of view of one skilled in the art at the time of the invention. This is classic hindsight. It is relatively easy to cobble together references to simulate an invention in hindsight, especially where the Examiner has demonstrated a propensity to consider the inventor's terminology in isolation, as indicated above.

It is respectfully requested that the Examiner – in light of the above – reconsider the novelty of the invention as claimed.

For completeness of the record, since the Examiner has repeated his prior grounds of rejection, the applicant will now restate the argument regarding the §103 grounds of rejection. Aycock involves a method for providing interactive evaluation

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of potential vendors. More specifically, Aycock is focused on an evaluating the quality control capabilities of suppliers (col. 5, lines 1-3) with a view toward qualifying vendors for, e.g. software development projects. The quality control capabilities are at the center of a two tiered process, a first tier establishing a master set of supplier quality process maturity requirements (col. 5, lines 19-21), and a second tier using this master set to evaluate vendor responses to an RFP/RFQ. The background section cited by the Examiner for the “plurality of attributes” aspect of the invention is directed to the industry problem of quality assurance, and there is no attention given to a “plurality of attributes.” While it may be inferred that decisions about vendor “maturity” are not one-dimensional, this does not provide a predicate for the invention’s connection between a “plurality of attributes” and the graphical “bid-line” presentation through which the invention has utility.

The Examiner argues that Aycock is related “under the analogous arts test.” This misapprehends the applicant’s point. The applicant’s argument assumes that Aycock is suitably analogous art. The problem with Aycock is not at the level of “relevant art” but rather at the level of the specific teachings that are alleged – and alleged incorrectly – to make the invention obvious. It is respectfully requested that the Examiner reread the foregoing and succeeding paragraphs regarding the Aycock teachings, and observe that the teachings of Aycock fail to support the conclusion drawn by the Examiner. The applicant observes that the expansive interpretation of claim language upon which the Examiner’s may be relying would be inconsistent with the above described teachings of *Phillips*. It was in part for this reason that the *Phillips* holding was discussed at such length, above. It is respectfully requested that the Examiner reconsider the claim language in view of *Phillips*. Then it will be clear why the applicant is puzzled by the Examiner’s reliance upon Aycock. Suitable comments are provided by the applicant within the remarks repeated below.

The passage cited by the Examiner in support of each bid “having values for each of said plurality of attributes” (col. 3, lines 23-35) refers to “a selected group of

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requirements defining quality control standards” supplied in the RFP/RFQ. However, **the “scaled score” on each of the requirements is provided NOT by the vendor in response to the RFP/RFQ (as in the present invention) but rather by the evaluation team.** Thus, it is submitted that the cited Aycock disclosure does NOT suggest the multi-attribute bid structure of the invention, and cannot be the basis for a rejection.

The Examiner acknowledges that Aycock does not teach the claimed graphical display. However, as indicated above, the cited passages from Aycock does not even teach bids where the bidder (not the evaluation team) provides the values for each of the “plurality of attributes”. Thus the Examiner’s argument is without a proper predicate. Nonetheless, it is true that Aycock also lacks any description or suggestion of the claimed graphical display. For this aspect of the invention the Examiner cites Jones, and in particular pages 85-87 of Jones, which is a “radar chart” used to compare various food items, each food item being rated by the categories of appearance, aroma, taste, texture and digestibility. It will be observed that the food item ratings shown in Jones appear to be constructed by the same person, a food taster for the emperor. By contrast, in the present invention each bidder provides its own bid responsive to the attributes requested in the RFQ.

As with the Aycock reference, the “values” for the “plurality of attributes” are not provided by individual bidders, but rather by an evaluator. It is submitted that the submission of the respective “values” for the “plurality of attributes” by the respective bidders in their bids is a critical predicate for a valid reference. That predicate is missing both from Aycock and Jones.

In response to the foregoing argument, the Examiner argues that the claim language “is silent concerning which party is providing information to the system.” More particularly, the Examiner states the principle of the “broadest reasonable interpretation consistent with the specification,” citing a 1969 case from the CCPA. In view of *Phillips*, this rule must give precedence to the specification itself, and not

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read into the specification a meaning that would merely be consistent with “dictionary” definitions of particular terms.

In view of *Phillips*, the claim language within the context of the specification clearly provides that the “attribute values” are included in the bids provided by the bidders. There is no warrant for inserting within the specification an expansive definition of “attribute values” that would allow inclusion of Aycock’s “evaluation team” within the bid provided by the bidders. The Examiner’s interpretation turns a sensible claim into a jumble of disconnected dictionary words. Indeed, the interpretation makes the claim incoherent. It is simply unreasonable – and contrary to *Phillips* – to take a bid apart with the willy nilly surgical style applied by the Examiner. The interpretation loses the forest for the trees.

The Examiner’s argument, as an aside and perhaps in anticipation of an unnecessary amendment, regarding “intended use” is similarly wide of the mark and not pertinent to the language of the claims in view of the requirements of *Phillips*. Indeed, the wisdom of the *Phillips* holding is confirmed by the Examiner’s stretching of the plain meaning, in context of the specification, of the claim language. This stretching of meaning under the rubric of “broadest definition” of terms, divorced from the coherence provided by the specification, has caused the Examiner to run far afield from a common sense interpretation, as would be provided by someone skilled in the art who has actually read the specification, examined the drawings, and interpreted the claims in light thereof.

Further, there is no facility in the use of Jones’ radar chart to compare competing bids, nor is there a suggestion of such an application. Further, the attribute lines are not parallel. Indeed, the point of a “radar chart” is that it highlights and gives psychological preference to food items whose ratings yield a symmetrical appearance. Thus ordinary soup appears most attractive from the point of view of symmetry, even though it cannot compete with cookies on several categories, because

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the “cookies” pentagonal evaluation structure has an odd shaped asymmetrical appearance. This fits with Jones’ theme of showing how to “lie with charts.”

Ironically, the Examiner cites the principle against “piecemeal analysis of the references.” This is a sound principle. The irony is that the Examiner’s “piecemeal” analysis of the claim language is what holds the references together. The applicant has simply provided a logical analysis of the references as they would be viewed by one skilled in the art in light of a *Phillips* interpretation of the claim language. It is respectfully requested that the Examiner review the claim language, in view of the specification as required by *Phillips*, and reconsider the applicability of these references, in proper combination, to the claims as written, rather than to the claims as a jumble of dictionary word interpretations divorced from the specification and the sensible viewpoint of one skilled in the art.

For the parallel line feature of the claimed display the Examiner cites Light, which shows a simple bar chart displaying metrics for five items. It is not clear from the cited chart what the utility of the chart is. The Examiner has not indicated why this bar chart in Light would be connected by one skilled in the art to the Jones “radar chart” in order to generate the claimed display. Jones itself teaches against such a distortion of its “radar chart” because of the very purpose of the chart, which is to highlight preference for foods showing a symmetry in the display. Absent evidence for such a connection it is likely that impermissible hindsight is being used to make the necessary connection.

The argument made by the Examiner connecting Jones with Light is a classic example of hindsight. This hindsight is enabled and made superficially plausible by a style of interpretation that decomposes the components of a claim into pieces that are disconnected from the specification, thereby making the claim incoherent. The pieces are then reassembled from disparate sources that would not be connected by one skilled in the art. The plain meaning of the claim language, and the innovation which is described in this language, is destroyed in this process. Specifically, the

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Examiner's analysis has decomposed the invention into a) multiple data sets, b) component attributes, c) equidistant parallel axes, and d) simultaneous display. Jones radar chart provides everything but parallel axes, which are provided by Light.

This analysis loses the forest for the trees. The decomposition accomplished by the Examiner completely ignores the innovative combination of a plurality of bid lines formed by connecting, for each bid, values on attribute scales arranged in parallel lines, as shown in Figures 13 and 14. This display interface provides an innovative solution for a buyer who wants to see a plurality of multi-attribute bids on a display. The Examiner's style of decomposed analysis and claim representation avoids having to examine the innovation which is claimed.

But even that hindsight connection, enabled by a decomposition which avoids the plain meaning of the invention as claimed, is inadequate. Apart from this decomposition, the evidentiary support in the cited references is illusory rather than substantive. The passages cited by the Examiner disclose "values" for the "plurality of attributes" that are not sourced to the bidder. If the "values" are not provided by the bidder, then they are not part of the bid and cannot be represented – as the Examiner has attempted to do, contrary to the claim language as interpreted in accordance with *Phillips* – as if it were a matter of indifference whether the "values" come from the bidder or somewhere else. The root of the Examiner's difficulty is that the claim language as presented, which has a plain and coherent meaning when read in the context of the specification in accordance with *Phillips*, is reduced to incoherent gibberish by a style of interpretation that is contrary to *Phillips*.

Nor does the Friesen reference remedy this deficiency. Friesen's disclosure teaches against the limitation of "bid lines" because Friesen's display forecloses the possibility of a display of such "bid lines." This is because Friesen teaches a graphical display as a means to show and compare multiple "semi-fungible" goods and their order values. Applicant's argument becomes clear looking at Friesen's display. In Friesen, each "axis" is a separate market for a particular set of related

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goods. The differences within the set are displayed on the same axis, reflecting a single bottom line value parameter. There is no possibility of a “bid line” across different attributes.

In short, a *prima facie* ground for rejection under §103 for obviousness has not been established with the references cited by the Examiner. The Examiner’s assertion that the teachings of these references correspond to the claimed elements of the invention is respectfully traversed. It follows, *a fortiori*, that one of ordinary skill in the art would be unable to combine these teachings to reproduce the invention.

The present invention provides a unique display concept for bids responsive to an RFQ. The display interface is responsive to a particular set of problems in the prior art: use of a single number to represent multiple attribute values hides important information useful to buyers (page 6, lines 23-25); assigning “weights” to different attributes is extremely difficult (page 7, lines 3-5); and the prior art provides no means to express relationships among different attributes (page 7, lines 10-11). The present invention provides a two-dimensional matrix type display to address these prior art deficiencies, as shown in Figs. 5-14.

The present invention teaches the following, each and all of which are not taught by the cited references: 1) RFQ submission including values submitted by the bidder (claim 1, 19); 2) a sell bid line (claim 1); 3) user interaction in the interface such as partial bid line selection (claim 4); 4) multimedia rendering of additional information (claim 7); 5) additional information displays (claims 3, 5, 9); 6) tagging and filtering (claims 11, 12); 7) untagging (claim 13); 8) counting of bid lines (claims 14, 15); 9) enlarging and reduction (claims 16, 17); and 10) scrolling (claim 18).

In view of the foregoing, it is requested that the application be reconsidered, that claims 1 and 3-30 be allowed, and that the application be passed to issue.

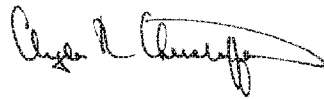
Should the Examiner find the application to be other than in condition for allowance, the Examiner is requested to contact the undersigned at 703-787-9400

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(fax: 703-787-7557; email: clyde@wcc-ip.com) to discuss any other changes deemed necessary in a telephonic or personal interview.

If an extension of time is required for this response to be considered as being timely filed, a conditional petition is hereby made for such extension of time. Please charge any deficiencies in fees and credit any overpayment of fees to Deposit Account 50-0510 (IBM-Yorktown).

Sincerely,

A handwritten signature in black ink, appearing to read "Clyde R. Christofferson", with a long, sweeping horizontal stroke extending to the right.

Clyde R Christofferson
Reg. No. 34,138

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